IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 34216

BARRY SEARCY,	)	**2008 Unpublished Opinion No. 596**
	)	
Plaintiff-Appellant,	)	**Filed: August 11, 2008**
	)	
v.	)	**Stephen W. Kenyon, Clerk**
	)	
ADA COUNTY, a political subdivision of the State of Idaho; J. DAVID NAVARRO, GREG H. BOWER, ROGER A. BOURNE, CONNIE VIETZ, LARRY D. REINER, DARLA S. WILLIAMSON, KEVIN SWAIN, GARY RANEY and JUNE GARDNER, in their individual and official capacities; JOHN and JANE DOES 1 through 20, fictitiously named persons,	)	**THIS IS AN UNPUBLISHED OPINION AND SHALL NOT BE CITED AS AUTHORITY**
	)	
Defendants-Respondents.	)	

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Cheri C. Copsey, District Judge.

Order dismissing claims in civil complaint, affirmed; orders granting motions for summary judgment in favor of defendants, affirmed.

Barry Searcy, Boise, pro se appellant.

Greg H. Bower, Ada County Prosecuting Attorney; Sherry A. Morgan, Deputy Prosecuting Attorney, Boise, for county respondents.

Hon. Lawrence G. Wasden, Attorney General; James D. Carlson, Deputy Attorney General, Boise, for state respondents.

PERRY, Judge

Barry Searcy appeals from the district court's order dismissing two claims in his amended complaint for failure to state a claim upon which relief can be granted and the district court's orders granting summary judgment in favor of the defendants on the remaining claims. For the reasons set forth below, we affirm.

I.
FACTS AND PROCEDURE

Searcy is in the custody of the Idaho Department of Corrections (IDOC), serving a life sentence for first degree murder. In November 2003, Searcy requested that the IDOC withdraw $75 from his inmate trust account and issue a check payable in that amount to a private investment account held by Searcy. Shirley Audens, an accountant employed by IDOC, issued the requested check but then voided the check and redeposited the $75 into Searcy's trust account. Audens responded in writing to Searcy that IDOC policy prohibited Searcy from conducting business from his cell but money could be transferred to or from an outside account through a third party who was also a signor on that account. Searcy filed inmate concern forms challenging Audens's decision, but Audens declined to process Searcy's request.

On December 29, 2003, Searcy sent a letter to the Ada County prosecutor's office, requesting that the county file a criminal complaint of grand theft and omission of a public duty against Audens. Connie Vietz, a deputy prosecutor for Ada County, sent a letter to Searcy, stating that the county was declining to prosecute the case. Vietz explained that Audens did not commit a crime based on Searcy's allegations. On February 4, 2004, Searcy then mailed a letter to the magistrate division of Ada County requesting that the clerk of the court lodge and file the criminal complaint. The clerk of the court, J. David Navarro, apparently sent the complaint to the prosecutor's office. In a letter from deputy prosecutor Roger A. Bourne, the prosecutor's office indicated that it did not believe a criminal violation had occurred but indicated that Searcy's request was forwarded to the trial court administrator.[1] The trial court administrator, Larry D. Reiner, responded to Searcy in writing that the clerk of the district court does not accept criminal complaints from individuals until probable cause has been found, and no further action could be taken on Searcy's complaint after the prosecutor's office declined to pursue the case.

On March 24, 2004, Searcy sent a letter to the Honorable Darla S. Williamson, administrative district judge, enclosing his initial complaint against Audens and additional criminal complaints against Navarro, Bourne, Vietz, Reiner, and Ada County Prosecutor Greg H. Bower, for impeding Searcy's efforts to file criminal charges against Audens. In the complaints against Navarro, Bourne, Vietz, Reiner and Bower, Searcy set forth identical charges of

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[1] Although Bourne's name appears as the author, Vietz signed this letter.

intimidating a witness, conspiracy to intimidate a witness, omission of a public duty, and conspiracy to commit omission of a public duty. Bourne then sent Searcy another letter declining prosecution, and Judge Williamson responded with a letter instructing Searcy to send his allegations to the Idaho Attorney General's office for review.

On June 18, 2004, Searcy submitted a motion to file a "private citizen's criminal complaint before a magistrate" against Audens, as well as a letter to Judge Williamson and a brief in support of his motion. The new criminal complaint alleged that Audens committed two counts of grand theft and one count of omission of a public duty by refusing to process Searcy's check. A member of Judge Williamson's staff wrote Searcy a letter informing him that his case against Audens was assigned to the magistrate judge, Kevin Swain. Judge Swain ordered that a "sworn complaint may be filed with the court." On July 13, 2004, Searcy again submitted his criminal complaint and attached several exhibits. In an enclosed letter, Searcy stated that he felt he had met the legal burden but would be willing to testify if necessary. Judge Swain held a hearing where Vietz appeared on behalf of the state and indicated that a detective named "June Gardner"[2] had not completed the investigation into the allegations. Approximately one month later, Judge Swain held another hearing, where Vietz appeared on behalf of the state and indicated that the case should be dismissed for lack of a factual basis. Judge Swain then issued an order dismissing the case against Audens. Searcy wrote Judge Williamson yet another letter regarding dismissal of the case. Judge Williamson responded that Searcy could not appear before the magistrate as a citizen while he was incarcerated and, even if he could appear, the county prosecutor's office had already determined that the charges against Audens should not be pursued.

Searcy appealed Judge Swain's order dismissing the case against Audens to the district court. The district court dismissed the appeal on the basis that Searcy lacked standing. Searcy filed a motion to reconsider, which the district court denied. Searcy appealed again, and the Supreme Court dismissed his appeal on the ground that Searcy was not an aggrieved party.

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[2] The record indicates that Vietz was referring to Jim Gardner, who was an investigator. Searcy appears to have relied on a mistake in the transcript of this hearing by naming "June Gardner" as a defendant.

On June 23, 2005, Searcy sent a letter to Judge Williamson indicating his intent to file additional criminal complaints against Navarro, Bower, Bourne, Vietz, and Reiner, which he enclosed with supporting affidavits and briefs. Searcy's criminal complaints alleged actions impeding Searcy's attempts to file charges against Auden on February 4, 2004, and on March 24, 2004, and set forth charges of intimidating a witness, destruction of evidence, grand theft of public records, and conspiracy. Searcy also filed a motion requesting that he be permitted to personally testify at a probable cause hearing on these complaints. Judge Williamson responded with a letter indicating that Searcy would not be transported to a hearing before a magistrate unless requested by the prosecutor.

Searcy filed a civil complaint in United States District Court against Ada County, Navarro, Bower, Bourne, Vietz, Reiner, Judge Williamson, Judge Swain, Gardner, and Ada County Sheriff Gary Raney. Searcy alleged state and federal law violations based on his attempts to bring criminal charges against Audens. On May 17, 2006, the federal court issued an order declining to address the state law claims and dismissing the federal law claims on the ground that they were premised on Searcy's frivolous criminal charges against Audens.[3] Searcy appealed, but the Ninth Circuit Court of Appeals dismissed his appeal.

On June 14, 2006, Searcy filed his civil complaint in this action and, on June 23, 2006, filed an amended complaint requesting monetary and declaratory relief against Ada County, Navarro, Bower, Bourne, Vietz, Reiner, Judge Williamson, Judge Swain, Gardner, and Raney. Searcy alleged several claims of negligence arising from the handling of his criminal complaints dated February 4, 2004; March 24, 2004; July 13, 2004; and June 23, 2005. Searcy alleged intentional infliction of emotional distress arising from the handling of his criminal complaints. Additionally, the amended complaint set forth a claim for declaratory judgment that all defendants violated Searcy's right to file private citizen criminal complaints and two claims for declaratory judgment that all defendants violated Searcy's rights as a crime victim.

Ada County, Navarro, Bower, Bourne, Vietz, Raney, and Gardner (the "county defendants") filed a motion to dismiss the claims against them pursuant to I.R.C.P. 12(b)(6). Reiner, Judge Williamson, and Judge Swain (the "state defendants") then filed a motion to

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[3] The court also noted in its decision that Searcy had previously brought a civil case in federal court regarding Audens' refusal to transfer funds. The record does not contain any additional information regarding this prior federal case.

dismiss the claims against them pursuant to Rule 12(b)(6). Searcy opposed these motions. The district court issued an order ruling that the motions to dismiss should be treated as motions for summary judgment, pursuant to Rule 56(c), because the parties submitted matters outside of the pleadings. The district court then issued a notice of intent to dismiss Counts X and XI, pursuant to I.C. § 31-3220A, on grounds other than those raised by the county and state defendants. The district court indicated that Counts X and XI should be dismissed for failure to state a claim pursuant to Rule 12(b)(6). After the parties responded, the district court issued an order dismissing those counts for the reasons set forth in the notice. Searcy moved for reconsideration, which the district court denied. On Searcy's remaining claims, the district court issued an order granting summary judgment to the county defendants and an order granting summary judgment to the state defendants. In these orders, the district court also awarded costs and attorney fees to the county and state defendants. Searcy appeals.

II.
STANDARD OF REVIEW

As an appellate court, we will affirm a trial court's grant of a Rule 12(b)(6) motion where the record demonstrates that there are no genuine issues of material fact and the case can be decided as a matter of law. *Coghlan v. Beta Theta Pi Fraternity*, 133 Idaho 388, 398, 987 P.2d 300, 310 (1999). When reviewing an order of the district court dismissing a case pursuant to Rule 12(b)(6), the nonmoving party is entitled to have all inferences from the record and pleadings viewed in its favor, and only then may the question be asked whether a claim for relief has been stated. *Coghlan*, 133 Idaho at 398, 987 P.2d at 310. The issue is not whether the plaintiff will ultimately prevail, but whether the party is entitled to offer evidence to support the claims. *Orthman v. Idaho Power Co.*, 126 Idaho 960, 962, 895 P.2d 561, 563 (1995).

Summary judgment under Rule 56(c) is proper only when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. On appeal, we exercise free review in determining whether a genuine issue of material fact exists and whether the moving party is entitled to judgment as a matter of law. *Edwards v. Conchemco, Inc.*, 111 Idaho 851, 852, 727 P.2d 1279, 1280 (Ct. App. 1986). When assessing a motion for summary judgment, all controverted facts are to be liberally construed in favor of the nonmoving party. Furthermore, the trial court must draw all reasonable inferences in favor of the party resisting the

motion. *G & M Farms v. Funk Irrigation Co.*, 119 Idaho 514, 517, 808 P.2d 851, 854 (1991); *Sanders v. Kuna Joint School Dist.*, 125 Idaho 872, 874, 876 P.2d 154, 156 (Ct. App. 1994).

The party moving for summary judgment initially carries the burden to establish that there is no genuine issue of material fact and that he or she is entitled to judgment as a matter of law. *Eliopulos v. Knox*, 123 Idaho 400, 404, 848 P.2d 984, 988 (Ct. App. 1992). The burden may be met by establishing the absence of evidence on an element that the nonmoving party will be required to prove at trial. *Dunnick v. Elder*, 126 Idaho 308, 311, 882 P.2d 475, 478 (Ct. App. 1994). Such an absence of evidence may be established either by an affirmative showing with the moving party's own evidence or by a review of all the nonmoving party's evidence and the contention that such proof of an element is lacking. *Heath v. Honker's Mini-Mart, Inc.*, 134 Idaho 711, 712, 8 P.3d 1254, 1255 (Ct. App. 2000). Once such an absence of evidence has been established the burden then shifts to the party opposing the motion to show, via further depositions, discovery responses or affidavits, that there is indeed a genuine issue for trial or to offer a valid justification for the failure to do so under I.R.C.P. 56(f). *Sanders*, 125 Idaho at 874, 876 P.2d at 156.

The United States Supreme Court, in interpreting Federal Rule of Civil Procedure 56(c), which is identical in all relevant aspects to I.R.C.P. 56(c), stated:

> In our view, the plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. In such a situation, there can be "no genuine issue as to any material fact," since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial. The moving party is "entitled to judgment as a matter of law" because the nonmoving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof.

Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986) (citations omitted). The language and reasoning of *Celotex* has been adopted in Idaho. *Dunnick*, 126 Idaho at 312, 882 P.2d at 479.

III.

ANALYSIS

The district court found that several of the state and county defendants were entitled to judicial or prosecutorial immunity and that several of Searcy's claims against Navarro and the state defendants were barred by his failure to file a notice of tort claim pursuant to I.C. § 6-905.

The district court also held that Searcy's claims failed on the merits. Because we conclude that the district court properly decided on the merits of each claim, we do not address the district court's rulings regarding immunity and failure to file a notice of tort claim.

A. Negligence Claims

Counts I-IV of Searcy's amended complaint alleged different state and county defendants were negligent in handling Searcy's criminal complaints. Count V alleged that all state and county defendants conspired to commit tortious acts and omissions related to the handling of the criminal complaints and, thus, appears to be a negligence claim. Count VI alleged negligent training and supervision of employees against several state and county defendants, and Count VII alleged negligent retention of employees against Ada County. Searcy's theory with regard to Counts VI and VII is that the negligent training, supervision, and retention of employees resulted in the mishandling of Searcy's criminal complaints.

A cause of action for common-law negligence in Idaho has four elements: (1) a duty, recognized by law, requiring the defendant to conform to a certain standard of conduct; (2) a breach of that duty; (3) a causal connection between the defendant's conduct and the resulting injury; and (4) actual loss or damage. *Nation v. State, Dept. of Corr.*, 144 Idaho 177, 189, 158 P.3d 953, 965 (2007). The district court held, in part, that summary judgment was warranted on each of these claims on the ground that Searcy had failed to demonstrate that he was injured by any of the allegedly negligent conduct. The district court reasoned that, if Searcy had no right to have the prosecutors pursue the initial criminal complaint against Audens or if the initial criminal complaint did not allege a crime, Searcy cannot demonstrate he suffered an injury. We agree with this reasoning.

Searcy's criminal complaint against Audens did not allege facts that would support a charge of grand theft or willful omission of a public duty. Rather, Searcy's allegations and exhibits indicate that Audens returned the $75 to Searcy's prison trust account and instructed him as to the proper procedure to transfer funds from his trust account. Searcy attempted to bring subsequent criminal charges against other state and county officials against whom he now alleges negligence. Each of the subsequent criminal complaints, however, was an attempt by Searcy to force prosecution of the baseless criminal complaint against Audens, and Searcy has not established an independent injury based on any mishandling of those subsequent criminal complaints. Furthermore, in American jurisprudence, a private citizen lacks a judicially

cognizable interest in the prosecution or nonprosecution of another. *Linda R. S. v. Richard D.*, 410 U.S. 614, 619 (1973). Indeed, the Idaho Supreme Court dismissed Searcy's appeal from the magistrate's dismissal of his initial criminal complaint against Audens on the ground that Searcy was not an aggrieved party. Searcy cannot claim he was injured by the alleged mishandling of the prosecution of the complaint against Audens or the subsequent complaints against the various state and county defendants when Searcy lacked any judicially cognizable interest in those cases.

B. Intentional Infliction of Emotional Distress

In Count VIII of the amended complaint, Searcy alleged a claim of intentional infliction of emotional distress against Navarro, Bower, Bourne, Vietz, Reiner, Gardner, Judge Williamson, and Judge Swain. According to Searcy, the intentional mishandling of his criminal complaints caused him to suffer severe emotional distress.

Under Idaho law, a claim for intentional infliction of emotional distress has four elements: (1) the conduct must be intentional or reckless; (2) the conduct must be extreme and outrageous; (3) there must be a causal connection between the wrongful conduct and the emotional distress; and (4) the emotional distress must be severe. *Nation*, 144 Idaho at 192, 158 P.3d at 968. The district court granted summary judgment in favor of the defendants on the ground that Searcy failed to submit evidence as to the first two elements--that the alleged conduct be intentional or reckless and that the conduct be extreme and outrageous.[4]

To survive summary judgment, Searcy was required to demonstrate the existence of an issue of fact as to whether extreme and outrageous conduct occurred. Courts have required very extreme conduct before awarding damages for the intentional infliction of emotional distress. *Nation*, 144 Idaho at 192, 158 P.3d at 968; *Edmondson v. Shearer Lumber Prods.*, 139 Idaho 172, 179, 75 P.3d 733, 740 (2003). Even if a defendant's conduct is unjustifiable, it does not necessarily rise to the level of "atrocious" and "beyond all possible bounds of decency" that would cause an average member of the community to believe it was "outrageous." *See Nation*,

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[4] We reject Searcy's assertion that the district court granted summary judgment on this claim without providing Searcy adequate opportunity to respond to the basis for the judgment. In briefing in support of the state defendants' initial motion to dismiss for failure to state a claim, they asserted Searcy had not satisfied the extreme and outrageous conduct element. After the district court ordered that the motions should be treated as motions for summary judgment, the district court then accepted supplemental briefs and affidavits from Searcy, wherein he addressed the intentional infliction of emotional distress claim.

144 Idaho at 192, 158 P.3d at 968; *Edmondson*, 139 Idaho at 179, 75 P.3d at 740. Whether a defendant's conduct is so extreme and outrageous as to permit recovery is a matter of law. *Nation*, 144 Idaho at 192, 158 P.3d at 968.

We are not persuaded by Searcy's argument that the state and county defendants committed felonies in mishandling his criminal complaints and thus their actions were extreme and outrageous. The underlying premise of this entire dispute—Searcy's criminal complaint against Audens—was frivolous. Nevertheless, the record demonstrates that the defendants employed by the prosecutor's office took the time to investigate Searcy's allegations, and the magistrate held two hearings on the allegations. Judge Williamson responded to Searcy's voluminous correspondences regarding the initial criminal complaint against Audens as well as Searcy's subsequent criminal complaints against the state and county officials involved with the initial complaint. The record does not contain evidence of any rude or impolite responses to Searcy from any of the state or county defendants. The handling of Searcy's criminal complaints was not "atrocious" and "beyond all possible bounds of decency" that would cause an average member of the community to believe it was "outrageous." Additionally, because there was no evidence of extreme and outrageous conduct, the district court properly concluded that the record did not raise an issue of fact as to the element of reckless intent to commit extreme and outrageous conduct. The district court properly granted summary judgment against Searcy on his claim of intentional infliction of emotion distress.

C. Claims for Declaratory Judgment

1. Searcy's right to file a criminal complaint

In Count IX of the amended complaint, Searcy sought a declaratory judgment, pursuant to I.C. § 10-1201 and I.R.C.P. 57, that each of the state and county defendants violated Searcy's right to file criminal complaints. Searcy relies on I.C. § 19-504 as the basis of this right. The district court granted summary judgment against Searcy on this claim, apparently on the ground that Searcy had not established he was injured by any violation of his rights.

To address Searcy's argument, we must interpret I.C. § 19-504. The interpretation of a statute is an issue of law over which we exercise free review. *Zener v. Velde*, 135 Idaho 352, 355, 17 P.3d 296, 299 (Ct. App. 2000). When interpreting a statute, we will construe the statute as a whole to give effect to the legislative intent. *George W. Watkins Family v. Messenger*, 118 Idaho 537, 539-40, 797 P.2d 1385, 1387-88 (1990); *Zener*, 135 Idaho at 355, 17 P.3d at 299.

The plain meaning of a statute will prevail unless clearly expressed legislative intent is contrary or unless plain meaning leads to absurd results. *Watkins Family*, 118 Idaho at 540, 797 P.2d at 1388; *Zener*, 135 Idaho at 355, 17 P.3d at 299.

Section 19-504 provides:

> **Person lodging complaint**. When a complaint which has been subscribed to under oath by the party or parties lodging the same is laid before a magistrate alleging facts constituting the commission of a public offense, triable within the county, and the magistrate finds that the complaint alleges a public offense under the Idaho Code or county or city ordinance, the magistrate shall order the clerk of the court to file the complaint and refer the complaint to the appropriate county or city prosecuting attorney for further action.

Pursuant to this section, a magistrate may obtain jurisdiction when someone other than a prosecutor lodges a complaint, and it is immaterial whether that person is acting as a private citizen or for or on behalf of a public officer. *See State v. Murphy*, 99 Idaho 511, 516, 584 P.2d 1236, 1241 (1978); *Clark v. Meehl*, 98 Idaho 641, 642, 570 P.2d 1331, 1332 (1977). If the magistrate finds probable cause, it shall order the complaint be filed and referred to the appropriate prosecutor's office for further action.

Section 19-504 does not provide, however, that all persons have a legally enforceable right to bring criminal charges before a magistrate and demand a probable cause determination or prosecution of the charges. If a magistrate orders a criminal complaint lodged by a citizen to be filed, the statute only requires that the complaint be *referred* to the prosecutor for *further action*. Prosecutors traditionally have discretion in deciding when to pursue criminal charges. *See Wayte v. United States*, 470 U.S. 598, 607 (1985)*; State v. Gilbert*, 112 Idaho 805, 807, 736 P.2d 857, 859 (Ct. App. 1987). Such discretion is allowed because a decision to prosecute is generally ill-suited to judicial review. *Wayte*, 470 U.S. at 607; *Gilbert*, 112 Idaho at 807, 736 P.2d at 859. The statute does not affect the prosecutor's discretion once the complaint is referred to him or her. The statute does not provide a basis for us to review the decision of the prosecutors in this case to move to dismiss the criminal charges against Audens.

Additionally, creating an enforceable right for private citizens to appear and be heard at a probable cause hearing each time a citizen lodges a criminal complaint would lead to an absurd result. This interpretation would cause meaningless litigation brought by citizens with no right to force prosecutors to pursue baseless criminal charges once filed. We conclude that, although a citizen *may* lodge a criminal complaint for a magistrate's consideration, I.C. § 19-504 does not

create a legally enforceable right to do so. Thus, Searcy had no legally enforceable right to have a magistrate rule on his subsequent criminal complaints against state and county officials involved with his initial criminal complaint against Audens.

An appellate court may affirm a lower court's decision on a legal theory different from the one applied by that court. *Matter of Estate of Bagley*, 117 Idaho 1091, 1093, 793 P.2d 1263, 1265 (Ct. App. 1990). We therefore affirm the district court's summary judgment orders as to Count IX on this alternative basis.

2. Searcy's rights as a crime victim

In Counts X and XI of the amended complaint, Searcy sought a declaratory judgment, pursuant to I.C. § 10-1201 and I.R.C.P. 57, that each of the state and county defendants violated his rights as a crime victim. Count X alleged violations of rights provided by Article 1, Section 22 of the Idaho Constitution, and Count XI alleged violations of rights provided by I.C. § 19-5306. According to Searcy, his rights were violated because he was not transported to the two hearings on his criminal complaints against Audens, he was not allowed to be present and heard at probable cause hearings on any of his criminal complaints, prosecutors with a conflict of interest handled his complaints, and a magistrate never rendered a probable cause determination on his criminal complaints.

Article I, Section 22(6) of the Idaho Constitution affords victims of crime the right to be heard, upon request, at all criminal justice proceedings considering a plea of guilty, sentencing, incarceration or release of the defendant, unless manifest injustice would result, and I.C. § 19-5306(1)(e) codifies that right. *State v. Leon*, 142 Idaho 705, 707, 132 P.3d 462, 464 (Ct. App. 2006). Additionally, crime victims have a constitutional right to "be present at all criminal justice proceedings." IDAHO CONST., art. I, § 22(4). *See also* I.C. § 19-5306(1)(b). The Idaho Constitution references the statute for the definition of "crime victim." *See* IDAHO CONST., art. I, § 22. The statute defines "victim" as "an individual who suffers direct or threatened physical, financial or emotional harm as a result of the commission of a crime." I.C. § 19-5306(5)(a). The statute defines "criminal offense" as "any *charged* felony or a misdemeanor involving physical injury, or the threat of physical injury, or a sexual offense." I.C. §§ 19-5306(5)(b) (emphasis added).

The district court dismissed Counts X and XI for failure to state a claim, pursuant to Rule 12(b)(6). The district court ruled, in part, that I.C. § 19-5306 and Article 1, Section 22 of the

Idaho Constitution provided Searcy with no right to be present and heard at any proceedings on the criminal charges he attempted to initiate. We agree with this conclusion.

Searcy is incorrect in his assertion that he became a "crime victim" for purposes of Idaho's Crime Victim Statute and the Idaho Constitution at the moment the alleged crimes were committed. Sections 19-5306(5)(a) and (b) make clear that a "crime victim" is a person who has suffered harm as the result of crime which has been *charged*. Furthermore, a crime victim must request to be present and heard at criminal justice proceedings in order for a violation of those rights to occur. Even if we assume Judge Swain's order permitting the filing of Searcy's criminal complaint against Audens initiated criminal charges and thereby entitled Searcy to the rights of a "crime victim," Searcy never requested to be present at proceedings on that complaint. Additionally, although Searcy was provided with the opportunity to be "heard" on the charges against Audens in the form of his affidavits and exhibits, he had no right to be heard at either hearing before Judge Swain because those hearings were not of the type listed in Article I, Section 22(6) and I.C. § 19-5306(1)(e). Finally, with regard to Searcy's subsequent criminal complaints, Searcy was not entitled to any rights as a crime victim because no court or prosecutor ever filed any of those complaints and they alleged no criminal acts.

D. Motion to Substitute Connie Vietz's Estate

Searcy challenges the district court's denial of his motion to substitute the estate of Connie Vietz for Vietz. The record indicates that Vietz died on October 19, 2006, and Searcy attempted to substitute her estate to recover on his claims against her. Because we hold that the district court properly granted summary judgment against Searcy as to all claims against Vietz, substituting Vietz's estate would provide no relief for Searcy. We therefore decline to address the district court's denial of Searcy's motion.

E. Costs and Attorney Fees in the Trial Court

Searcy next challenges the district court's order awarding attorney fees to the state and county defendants pursuant to I.C. § 31-3220A(16). Whether a statute awarding attorney fees applies to a given set of facts is a question of law and subject to free review. *Vanderford Co., Inc. v. Knudson,* 144 Idaho 547, 552, 165 P.3d 261, 266 (2007). Section 31-3220A(16) applies to actions filed by prisoners and provides, in part:

> The court shall award reasonable costs and attorney's fees to the defendant or respondent if the court finds that:
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> (a) Any allegation in the prisoner's affidavit is false;

> (b) The action or any part of the action is frivolous or malicious; or
> (c) The action or any part of the action is dismissed for failure to state a claim upon which relief can be granted.

Although this section requires an award of attorney fees when any one of its three subsections is met, the district court correctly found that Searcy's action satisfied all three subsections. Searcy's allegation that a magistrate did not consider his criminal complaint against Audens was false. All claims set forth in the amended complaint were frivolous, and Searcy should have been aware that they lacked merit at the time he initiated this action. Indeed, less than one month prior to when Searcy filed his initial complaint in this action, the United States District Court held that the criminal charge against Audens was "a frivolous claim" and, thus, could not support his alleged violations of federal law. Finally, we have already held that the district court properly dismissed Counts X and XI for failure to state a claim upon which relief can be granted. The district court therefore properly awarded costs and attorney fees to the state and county defendants pursuant to I.C. § 31-3220A(16).

F. Costs and Attorney Fees on Appeal

The state defendants request costs and attorney fees on appeal pursuant to I.C. § 12-121. The county defendants request costs and attorney fees on appeal pursuant to I.C. § 12-121 and I.C. § 31-3220A(16).

An award of attorney fees may be granted under I.C. § 12-121 and I.A.R. 41 to the prevailing party and such an award is appropriate when the court is left with the abiding belief that the appeal has been brought or defended frivolously, unreasonably, or without foundation. *Rendon v. Paskett*, 126 Idaho 944, 945, 894 P.2d 775, 776 (Ct. App. 1995). Additionally, I.C. § 31-3220A(16) provides a basis for an award of attorney fees on appeal in actions brought by prisoners because the section states that the court shall award attorney fees to the defendant *or respondent*. We concluded that this appeal is frivolous and meets the criteria for an award of attorney fees pursuant to I.C. § 12-121 and I.C. § 31-3220A(16). We award costs and attorney fees to the state defendants pursuant to I.C. § 12-121, and we award costs and attorney fees to the county defendants pursuant to I.C. § 12-121 and I.C. § 31-3220A(16).

IV.
CONCLUSION

The district court properly granted summary judgment in favor of the state and county defendants as to Searcy's seven claims of negligence, his claim of intentional infliction of emotional distress, and his claim of a violation of his right to have a magistrate rule on his criminal complaints. The district court properly dismissed Searcy's claims of violations of his rights as a crime victim for failure to state a claim upon which relief can be granted. Searcy's motion to substitute Vietz's estate would provide no relief for Searcy, and we do not address that issue on appeal. The district court properly awarded costs and attorney fees to the state and county defendants pursuant to I.C. § 31-3220A(16). We therefore affirm the district court's order dismissing two claims in Searcy's amended complaint and the district court's orders granting summary judgment in favor of the defendants on the remaining claims. Costs and attorney fees on appeal are awarded to respondents--the state and county defendants.

Chief Judge GUTIERREZ and Judge LANSING, **CONCUR.**